

### III. REMARKS/ARGUMENTS

#### A. Status of the Claims

Claims 1-3, 5-19, 27-29 and 31-41 are pending. Claims 4, 20-26, 30, and 42-46 have been previously cancelled. Claims 1, 2, 3, 5, 6, 11, 14, 15, 27, 28, 29, 31, 32, 36, and 37 have been amended. No new matter is introduced by these amendments, and these amendments are fully supported by the specification. Applicants respectfully request reconsideration of the rejections of these claims for at least the following reasons.

#### B. Claim Rejections Under 35 U.S.C. § 102(b)

Claims 1, 2, 5-14, 19, 27, 28, 31-36 and 41 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 5,185,697 to Jacobs *et al.* (“Jacobs”). The Office Action again contends that Jacobs discloses all elements of these claims. Applicants respectfully disagree.

In the prior response, Applicants submitted that Jacobs did not anticipate the claims because Jacobs’ directed to a “**crisis management system** for receiving information from various sources, chronologically organizing the information in files, updating automatically all related files, and providing the information in a comprehensive format to assist authorities during a crisis.” Response filed July 20, 2009 at 15-16 (quoting Jacobs, Col. 1, ll. 9-13(emphasis added)). As examples of crises, Jacobs discloses hijackings, kidnapping, and earthquakes. *Id.* (citing Jacobs at Col. 5, ll. 10-13). As such, Jacobs does not disclose maintaining business continuity for a department in an enterprise.

The Office Action has responded as follows:

Jacobs et al disclose the resource information describing at least one resource used by the enterprise (i.e., information stored in selected topic file, column 4, lines 49-55), wherein the at least one resource is a department within the enterprise (i.e., FAA, CIA and FBI within the government, column 1, lines 43-48). Moreover, Jacobs et al goes on

to disclose in these activities (i.e., FAA, CIA and FBI activities), crisis management helps the crisis action teams to organize and document information, while developing strategies to best maintain continuity (column 1, lines 48-57).

Office Action, Page 11. From this response, it appears that the outstanding rejection is a result of the Office Action's inconsistent interpretation of "at least one resource." Specifically, at one point, the Office Action considers "information stored in [a] selected topic file" to be the claimed "at least one resource," but then later considers "FAA, CIA, and FBI" to be the claimed "at least one resource." Not only is this inconsistent and improper, but it produces a nonsensical result.

Independent claim 1, as amended, recites:

1. A method for providing business continuity in an enterprise comprising:

***collecting department information describing at least one department within the enterprise;***

storing the department information in a database;

assessing a criticality of the at least one department;

storing the assessment of the criticality of the at least one department in the database;

***developing a recovery plan for recovery from a degradation of a functionality of the at least one department, wherein the recovery plan aims to ensure the business continuity of the at least one department;***

storing the recovery plan in the database;

assessing the recovery plan;

storing the assessment of the recovery plan in the database;

testing the recovery plan and recording the results of the testing;

storing the recorded results of the testing in the database; and

providing status data from the database, wherein the status data comprises at least one of a status of:

the collection of the department data;  
the assessment of the criticality;  
the development of the recovery plan; and  
the testing of the recovery plan.

Appl'n, Claim 1 (emphasis added). Although Applicants do not believe it to be necessary, Applicants have amended independent claims 1 and 27 in order to remove any ambiguity created by the use of the phrase "at least one resource used by the enterprise." Thus, the amended claims now refer to "at least one **department** within the enterprise." As Applicants will again demonstrate, this is not disclosed by the proposed combination of references.

As noted above, the Office Action (at one point) alleges that Jacobs' disclosure of the "FAA, CIA, and FBI within the government" is a disclosure of the claimed "at least one department within the enterprise." Office Action, Page 11. Assuming that this is proper (it is not), Jacobs does not disclose "developing a recovery plan for recovery from a **degradation of a functionality of the at least one department**" -- in the context of the Office Action, developing a recovery plan from a degradation of a functionality of the FAA, CIA, and FBI. Instead, Jacobs discloses crisis management -- defined by Jacobs to mean "the methodology of efficiently organizing information related to an emergency or crisis situation." Jacobs, Col. 1, ll. 15-17. Importantly, Jacobs does not disclose that any of the alleged "departments" have suffered a degradation in functionality -- in fact, Jacobs discloses that these alleged "departments" are used to **resolve** the crisis. See, e.g., Jacobs, Col. 5, ll. 44-46. Therefore, the Office Action's assertion that Jacobs discloses the claimed "at least one department" by disclosing the FAA, the CIA and the FBI is improper and incorrect.

The Office Action's other assertion regarding the claimed "resource" -- that Jacobs' information stored in selected topic file is a disclosure of a "resource" --

also fails. Not only are the “topic files” not *departments* within the enterprise, but Jacobs does not disclose that there is a degradation in the functionality of these topic files. Rather, it expressly discloses that the topic files are used to help resolve the crisis situation. *See* Jacobs, Col. 5, ll. 20-42. Thus, there is no disclosure of a degradation of the functionality of the topic files.

Simply put, a *crisis management system is not the same as a system for maintaining business continuity*. As Jacobs clearly fails to disclose all claim elements, it cannot anticipate, and Applicants respectfully request that the rejection of independent claims 1 and 27, and all claims dependent therefrom be withdrawn. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987)

**C. Claim Rejections Under 35 U.S.C. § 103(a)**

**1. Claims 3, 17, and 19, 29, 39 and 40**

Claims 3, 17, 18, 29, 39 and 40 stand rejected as allegedly rendered obvious by Jacobs in view of U.S. Patent Publication No. 2004/0103431 to Davenport *et al.* Applicants note, however, that claims 3, 17, and 18, and claims 29, 39 and 40 are dependent on independent claims 1 and 27, respectively, and are allowable for at least the reasons set for the above. *See* MPEP 2143.03 (“If an independent claim is nonobvious under 35 U.S.C 103, then any claim depending therefrom is nonobvious.”) (quoting *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988)). Therefore, Applicant respectfully requests that the rejections of claims 3, 17, and 18, 29, 39 and 40 be withdrawn.

**2. Claims 15, 16, 37 and 38**

Claims 15, 16, 37 and 38 stand rejected as allegedly rendered obvious by Jacobs. Specifically, with regard to claims 15 and 16, after apparently<sup>1</sup> admitting

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<sup>1</sup> It appears that the Office Action contains a typographical error in that it

that Jacobs does not disclose “generating a wallet card for the employee using the employee resource information, wherein the wallet card is generated at a workstation of the employee, and the wallet card contains a hotline, a website, and at least one emergency location that the employee can use in an emergency,” the Office Action asserts that “wallet cards are old and well known.” Office Action, page 10. Thus, the Office Action contends that:

[i]t would have been obvious to one of ordinary skill in the art to include a wallet card in the Jacobs et al system, since the claimed invention is merely a combination of old elements, and in the combination each element would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable

Office Action pages 10-11. The Office Action rejects claims 37 and 38 based on the “same rationale.” *Id.* Applicants respectfully disagree.

In the prior response, Applicants timely challenged the Office Action’s taking of official notice that “wallet cards are old and well known.” The Office Action has responded as follows:

First, as noted in Applicant's specification, page 26, ¶ 76, “[a] wallet card is common tool used by corporations ...” In addition, Sudia (US 2005/0114653) discloses a certification authority giving a user a wallet card containing contact information pertaining to a lost, stolen, destroyed or compromised machine (¶ 0056). Moreover, Hill et al (USPN 4,034,210) disclose tear-out wallet cards imprinted with information-conveying indicia, such as the cardholder contract, lost and found information, advertising information, use instructions and the like (column 9, lines 60-65).

Office Action, Pages 11-12. First, Applicants note that the statement at paragraph 76 is not an admission that wallet cards are prior art. *See* MPEP 2129. Second,

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asserts that “Jacobs et al. does disclose generating a wallet card.” Office Action, Page 10. It appears that the word “not” is missing.

Claims 15, 16 and claims 37 and 38 dependent on independent claims 1 and 27, respectively, and are allowable for at least the reasons set for the above. *See* MPEP 2143.03 (“If an independent claim is nonobvious under 35 U.S.C 103, then any claim depending therefrom is nonobvious.”) (quoting *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988)). Therefore, Applicant respectfully requests that the rejections of claims 15, 16, 38 and 39 be withdrawn.

#### **IV. CONCLUSION**

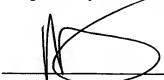
In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

Dated: December 10, 2009

By:

  
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